IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION

WAKE COUNTY

THE NORTH CAROLINA STATE BAR.

Petitioner

ν.

TEMPORARY RESTRAINING ORDER

ROBERT H. GOURLEY, SR., Attorney,

Respondent

THIS MATTER came on to be heard by the undersigned Judge of Superior Court of Wake County pursuant to Petitioner's Motion for Temporary Restraining Order and Petition for Preliminary Injunction. Petitioner, the North Carolina State Bar was represented by Leanor Bailey Hodge. Respondent, Robert H. Gourley, Sr., was notified of this hearing by telephone but was not present in court. Based upon the verified motion and petition and the evidence presented to the Court, the Court makes the following:

FINDINGS OF FACT

- 1. Respondent, Robert H. Gourley, Sr. ("Gourley"), was licensed to practice law in North Carolina in 1968.
- 2. Gourley practices law in Statesville, North Carolina. The North Carolina State Bar's ("State Bar") membership database shows the following address for Gourley: 127 N. Green Street, Statesville, NC 28677.
 - 3. Gourley maintained a trust account at Piedmont Bank.
- 4. The State Bar's preliminary investigation shows that Gourley's paralegal used funds from Gourley's trust account to pay for her personal expenses. It also shows that Respondent has failed to pay title insurance premiums for some of the real estate closings his office conducted.
- 5. The foregoing facts establish that funds held in trust by Gourley have been mishandled in violation of Rule 1.15-2 of the Revised Rules Professional Conduct.
- 6. A need for prompt action exists to ensure that additional client funds entrusted to Rodgers are not mishandled to the client's detriment.

Based upon the foregoing findings, the Court makes the following:

CONCLUSIONS OF LAW

- 1. Prompt action, pursuant to N.C. Gen. Stat. § 84-28(f), is necessary to preserve the status quo while the State Bar continues its analysis of Gourley's trust and operating accounts and to ensure that no client funds are mishandled.
- 2. Gourley should be enjoined from accepting any further funds from or on behalf of clients or other individuals in a fiduciary capacity, from withdrawing funds from and/or writing checks against any account in which client or fiduciary funds have been deposited, and from directing any employee or agent over whom Gourley exercises control to withdraw funds from and/or draw a check on any account in which client or fiduciary funds have been deposited, except as expressly authorized by this order.
- 3. To assist the State Bar's analysis of his trust and operating accounts, Gourley should provide the State Bar with records of all accounts in which client or fiduciary funds have been deposited.
- 4. Gourley should not be permitted to serve in any fiduciary capacity, including trustee, escrow agent, settlement agent, personal representative, executor or attorney-in-fact until further order of this Court.

THEREFORE, IT IS HEREBY ORDERED:

- 1. Robert H. Gourley, Sr. is enjoined from serving in any fiduciary capacity, including trustee, escrow agent, settlement agent, personal representative, executor or attorney-in-fact; receiving any funds from or on behalf of clients or other individuals in a fiduciary capacity; writing checks against or otherwise disbursing or withdrawing funds from any account in which client or fiduciary funds have been deposited; and/or directing or permitting any employee or agent over whom Gourley exercises control to draw a check on or otherwise disburse or withdraw funds from any account in which client or fiduciary funds have been deposited.
- 3. Robert H. Gourley, Sr., or any other person having custody or control of his trust account records, immediately produce to the State Bar upon request any of Gourley's bank records for accounts into which any trust or fiduciary funds have been deposited, including but not limited to bank statements, canceled checks, deposit slips, identification of deposited items, client ledger sheets and any other records relating to the receipt and disbursement of client or fiduciary funds.
- 4. If Gourley does not have possession of the minimum records regarding trust funds required to be maintained pursuant to Rule 1.15-3 of the Rules of Professional Conduct, that he direct the bank(s) where his trust accounts(s) are maintained to copy and transmit any such missing records directly to the State Bar at Gourley's expense.

- 5. That Gourley, or any other person having custody or control over records described herein, produce to the State Bar for inspection and copying all records and documents relating to individuals or entities for whom Gourley has provided legal services, including but not limited to client files, billing statements, memoranda and receipts. Current client files shall be produced within 24 hours of demand by the State Bar and closed client files shall be produced within 3 days of demand by the State Bar.
- 6. This Temporary Restraining Order shall remain in effect until the 149 day of February, 2011 unless extended by further orders of this Court.

THIS the <u>26</u> day of January, 2011 at <u>2.17</u>.M.

Wake County Superior Court Judge